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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,846	12/28/2001	Linda M. Dorschner	KCC 4846 (KC# 16,993)	9653

7590 07/31/2003
Senniger Powers Leavitt & Roedel
One Metropolitan Square
16th Floor Street
St Louis, MO 63102

EXAMINER

REICHLE, KARIN M

ART UNIT.	PAPER NUMBER
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3761

DATE MAILED: 07/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/034,846

Applicant(s)

DORSCHNER, LINDA M.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12-28-01, 7-19-02.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 69-101 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 69-101 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12-28-01, 3-29-02 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5, 8. 6) ☐ Other:

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DETAILED ACTION

Specification

1. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

For Example:

2. It is noted that the amendment to page 35, third paragraph, did not have a clean copy, i.e. the underlined spaces. Such has been corrected in red ink by the Examiner. Also claims 89-101 were improperly numbered 90-102. Such and the dependencies of such claims, where applicable, have been corrected in red ink by the Examiner.

Drawings

3. The drawings filed 3-29-02 have been placed in the file but are not approved, see following objection.

4. The drawings are objected to because in Figures 1-5 the line from 1 should either be an arrow or should extend all the way to the structure it denotes.—In Figure 1, the outline of element 8 and the line therefrom should be dashed to denote underlying structure. This also applies to the

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line from 18. In Figure 2, CD and MD don't denote any structure. In Figures 3-5, the line from 48 should be dashed to denote underlying structure. Also it is very difficult to see number 35. Also in Figures 3-5 the number 2 is used to denote a structure different from the structure it denotes in Figures 1-2, i.e. it only denotes part of the chassis not the whole chassis. The numeral should be used consistently. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Description

5. The abstract of the disclosure is objected to because terminology which can be inferred and legal terminology, i.e. "The present invention" and "comprises", should be avoided. On line 2, "multiplayer" should be--multilayer--. Correction is required. See MPEP § 608.01(b).
6. The use of the trademark ASPUN(R), page 14, KRATON(R), AHCOVEL(R) and GLUCOPON(R), page 15, EXXPOL(R), EXACT(R), ENGAGE(R), page 20, PEBAX(R), page 21, KRATON(R), LYCRA(R), PEBAX(R), HYTREL(R), AFFINITY(R), page 23, has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

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Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Trademarks should be shown in all capital letters or with a trademark symbol, not both.

7. The disclosure is objected to because of the following informalities: 1) In Figure 1, what is 15? 2) The Summary of the Invention section, i.e a description of the claimed invention, and the invention of the claims are not commensurate, see MPEP 608.01(d) and 1302.01. Furthermore, the description of the invention, e.g. page 12, lines 16-20, and the invention of claims 69-72, and 93-101 appear to be inconsistent, i.e the claims do not require any stretchability which would otherwise be affected by the surface area ratio. 3) On page 18, line 5, "oran" should be --or an--.

Appropriate correction is required.

Claim Objections

8. Claims 69-101 are objected to because of the following informalities: in claim 69, line 2, "the" should be --a--. In claims 70-93, line 1, "A" should be --The--. In claim 76, line 3 is redundant. These objections also apply to similar language in claims 94-101. Additionally, in claim 94, line 7, after "area", --surface-- should be inserted. Appropriate correction is required.

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Claim Rejections - 35 USC § 112

9. Claims 69-101 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims now require a core having a surface area which is not only less than about a specific percentage but also now in the alternative equal to about that percentage. Where is the support as originally filed for "or equal to"?

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 69-72 and 93-101 are rejected under 35 U.S.C. 102(b) as being anticipated by Cohen '457.

See Figures 1 and 3, i.e. surface area of core is less than or equal to about 30% of the surface area of the article, the back half of the article or the front half of the article. It is noted

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that the terminology "about" allows some leeway from the dimension it describes. Also see page 6, lines 16-18 and 22-25 of the instant specification, claim 1, lines 1-4 and col. 3, lines 49-66, i.e. the core is at least indirectly secured to the liner and cover.

12. Claims 69-70, 73-88, 90-91 and 93 are rejected under 35 U.S.C. 102(b) as being anticipated by Clear et al, PCT '367.

Claim 69: See Figures 1 or 2, i.e. surface area of core 28 is less than or equal to "about" 50% of the surface area of the article, liner is 24, cover is 26, see discussion of terminology of "about" in preceding rejection.

Claims 70, 73-88, 90-91 and 93: see page 3, line 5-page 4, line 5, page 7, lines 13-14, page 9, lines 4-28, page 10, lines 9-13, page 10, line 28-page 11, line 10, page 13, lines 3-23, page 15, line 13-page 17, line 16 and page 5, lines 20-23 as well as page 6, lines 6-18 and 22-25 and page 5, last 9 lines of the instant specification, i.e. the cover and liner are at least extensible and at most elastomeric, i.e. "but not necessarily elastomeric" infers "but not unnecessarily elastomeric", i.e. could be elastomeric, in both the longitudinal direction, i.e. panel 38, and the transverse direction, i.e. waist panel 34. With regard to claims 78-81 and 84-88, lines 3 et seq thereof recite capability of the claimed structure. See the portions of Clear cited supra, i.e. Clear et al teaches a cover and liner capable of lateral elongation and substantially permanent elongation laterally. Therefore, Clear et al includes all the claimed structure. Thus there is sufficient factual basis to conclude that the capabilities of such claimed structure would also be inherent in the same structure of Clear et al, see MPEP 2112.01

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13. Claims 69, 75, 78-81, 83-88 and 90-91 are rejected under 35 U.S.C. 102(b) as being anticipated by Hasse et al '433.

Claim 69: See Figures 2-4 and 10, i.e. surface area of core 28 is less than or equal to "about" 50% of the surface area of the article, liner is 24, cover is 48, see discussion of terminology of "about" in preceding rejections.

Claims 75, 78-81, 83-88, 90-91: see col. 5, lines 6-21, 63-67, col. 6, lines 25-27, col. 7, lines 25-31 and 49-56, col. 22, lines 44-63 and page 6, lines 6-18 and 22-25 and page 5, last 9 lines of the instant specification, i.e. the cover and liner are at least extensible and at most elastomeric (Note discussion of terminology "but not necessarily elastomeric" in previous rejection) in the transverse direction, i.e. the waistband 34 and flaps 30. With regard to claims 78-81 and 84-88, lines 3 et seq thereof recite capability of the claimed structure. See col. 14, lines 58-64, i.e. Hasse et al teaches a cover and liner capable of lateral elongation and substantially permanent elongation laterally of the claimed percentages at the claimed force. Therefore, Hasse et al includes all the claimed structure.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claim 89 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clear et al in view of Morman et al, PCT '913.

See page 1, line 17 and page 9, lines 8-9 of Clear et al, i.e. desire for aesthetically pleasing fit and clothlike appearance. Applicant claims an outer cover of a necked laminate of certain materials which Clear et al does not teach. However see Morman '913 at the abstract, page 18, lines 3-15 and page 19, lines 12-14, i.e. necked laminate of claimed materials used in diaper to improve fit and clothlike appearance. . To employ an outer cover including a necked laminate as taught by Morman, i.e. as claimed, on the Clear device would be obvious to one of ordinary skill in the art in view of the recognition that such would provide a more aesthetically pleasing fit and clothlike appearance and the desire of such by Clear et al.

16. Claim 92 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hasse et al in view of Divo et al, PCT '714.

Applicant claims an outer cover comprising spunbond polypropylene laminated with an SIS adhesive which Hasse et al does not teach. However see portions of Hasse et al cited supra and col. 4, lines 12-27 and col. 13, lines 19-29 of Hasse et al.(Applicant's attention is also invited to definition of "nonwoven" in Materials Handbook), i.e. outer cover of Hasse et al is spunbond polypropylene which is laminated to elastic by meltblown adhesive to form zero strain laminate to be ring rolled. See also Divo et al at col. 1, line col. 3, lines 29-55, col. 4, lines 35-56, col. 6, lines

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31-39, col. 8, lines 6-33, col. 10, lines 8-15, i.e. SIS adhesive applied by a melt blown process is used to attach nonelastic nonwoven layer to elastic layer to form zero strain laminate to be ring rolled. To substitute the adhesive as taught by Divo et al for the adhesive of Hasse et al would be obvious, see In re Siebentritt, 54 CCPA 1083, i.e. two equivalents are interchangeable for their desired function, express suggestion of desirability of substitution not needed to render such substitution obvious.

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The other prior art cited shows various surface areas of the core relative to the article surface areas.

18. Any inquiry concerning this communication should be directed to K. M. Reichle at telephone number 703-308-2617. The Examiner's regular work schedule is Monday-Thursday. The Official RightFAX number is 703-872-9302.

K-M Reichle
~~K-M Reichle~~
~~703-308-2617~~

KMR

July 28, 2003